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Attorneys for Plaintiff MAX INTERACTIVE, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MAX INTERACTIVE, INC.,

Plaintiff,

v.

DEVICEWEAR, LLC,

Defendant.

Case No.:

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

Plaintiff MAX INTERACTIVE, INC. hereby complains against DEFENDANT
DEVICEWEAR, LLC as follows:

THE PARTIES

1. Plaintiff MAX INTERACTIVE, INC. ("MAX") is a California corporation with
its principal place of business in Costa Mesa, California.

2. Upon information and belief, DEFENDANT DEVICEWEAR, LLC
("DEFENDANT") is a California limited liability company with its principal place of business
in Rocklin, California. DEFENDANT makes, imports, advertises, offers to sell, and/or sells
within the United States, including in the State of California and this judicial district, products
incorporating MAX's patented technology and design.

JURISDICTION AND VENUE

3. This action is for patent infringement arising under the patent laws of the United

1 States, Title 35 of the United States Code. This Court has subject matter jurisdiction over this
2 action pursuant to 28 U.S.C. §§ 1331 and 1338.

3 4. MAX seeks declaratory relief under 28 U.S.C. §§ 2201 and 2202.

4 5. This Court has subject matter jurisdiction over this action under 35 U.S.C. §§ 1331,
5 1338, 2201, and 2202.

6 6. This Court has personal jurisdiction over DEFENDANT because it resides in and is
7 domiciled in California.

8 7. Venue is proper in this judicial district under 28 U.S.C. § 1400(b) because it is the
9 judicial district in which DEFENDANT resides and has committed acts of infringement and has a
10 regular and established place of business.

11 **GENERAL ALLEGATIONS**

12 8. MAX is the assignee and owner of all rights, title and interest in U.S. Design Patent
13 No. D763,856 S (“the ’856 patent”), entitled “Case for an Electronic Device.” The ’856 patent
14 was duly and legally issued on August 16, 2016, by the United States Patent and Trademark
15 Office. A true and correct copy of the ’856 patent is attached as **Exhibit “1.”** MAX has retained
16 all rights to enforce the ’856 patent.

17 9. DEFENDANT does not have a license to the ’856 patent and has never held such
18 a license.

19 10. DEFENDANT makes, uses, advertises, offers for sale or imports products that
20 infringe the ’856 patent, including the “KeepSAFE Shell” product and any substantially similar
21 products under any product line or item number. The products infringe on one or more valid
22 claims of the ’856 patent as set forth in more detail below.

23 11. On information and belief, DEFENDANT had actual notice of the ’856 patent, and
24 its infringement of that patent, at least as early as August 16, 2016. Nevertheless, DEFENDANT
25 continued to infringe the ’856 patent.

26 **FIRST CAUSE OF ACTION**

27 **(Infringement of U.S. Design Patent No. D763,856 S)**

28 12. MAX incorporates by reference the paragraphs above as if set forth herein.

1 13. The '856 patent is valid and enforceable.

2 14. MAX is the owner, by assignment from the inventors, of all right, title and interest
3 in and to the '856 patent.

4 15. MAX invented, designed, and sells a novel and distinct product for protecting
5 electronic devices including laptop computers called the "Case for an Electronic Device." The
6 Case for an Electronic Device is designed according to the design claimed in the '856 patent.
7 Images of the protected product known as "Extreme Shell for Apple Macbook" are attached
8 hereto as **Exhibit "2."**

9 16. Through its website, DEFENDANT has advertised, offered for sale, sold, and/or
10 facilitated the sale of products that infringe on the '856 patent. The product lines sold through
11 the DEFENDANT's website include, but are not necessarily limited to, the following products:

- 12 • "KeepSAFE Shell" Snap On Dual Layer case for Macbook 11 in.
13 – by Caseiopeia;
- 14 • "KeepSAFE Shell" Snap On Dual Layer case for Macbook 12 in.
15 – by Caseiopeia; and
- 16 • "KeepSAFE Shell" Snap On Dual Layer case for Macbook 13 in.
17 – by Caseiopeia.

18 17. DEFENDANT advertises, offers for sale, and/or facilitates the sale of its
19 "KeepSAFE Shell" Snap On Dual Layer case infringing products on its website by providing
20 detailed product descriptions, pricing information, and an online purchasing platform.
21 DEFENDANT further sells or facilitates the sale of infringing products by accepting payment
22 for these products directly from consumers. On information and belief, after receiving payment
23 from consumers DEFENDANT either packs and ships the infringing product itself or works with
24 a third party to pack and ship the infringing product. Images of the infringing product are attached
25 hereto as **Exhibit "3."**

26 18. Through its website and using the procedures described above, DEFENDANT
27 has advertised, offered for sale, exposed for sale, sold, and/or facilitated the sale of products that
28 infringe the '856 patent, including but not limited to those listed in Paragraph 16.

1 19. An ordinary observer would conclude that the design of the infringing products is
2 substantially similar to the design claimed in the '856 patent, because both contain slotted rows on
3 the bottom, rounded edges at the corners, slightly raised edges, and two small stands affixed to a
4 lever on the bottom rear.

5 20. DEFENDANT had actual or constructive knowledge of MAX's patent rights, knew
6 or should have known that the advertisement, offer for sale, exposure for sale, sale, and facilitating
7 of sale of the infringing products would induce actual infringement, and/or acted with deliberate
8 indifference to MAX's patent rights because, *inter alia*, MAX informed DEFENDANT of the
9 infringement.

10 21. DEFENDANT has infringed and continues to infringe on the '856 patent by direct
11 infringement, contributory infringement, and/or inducing others to infringe in violation of 35
12 U.S.C. §§ 271 and 289, through the advertising, using, selling, offering for sale, exposing for
13 sale, facilitating of sale, and/or importation of the infringing products.

14 22. As a direct result of DEFENDANT's infringement, MAX has suffered, and will
15 continue to suffer, damages, irreparable harm, and impairment of the value of its patent rights.

16 23. MAX is entitled to enjoin DEFENDANT's infringing acts and to recover
17 from it the damages sustained by MAX as a result of DEFENDANT's infringement and/or
18 DEFENDANT's total profits as a result of its infringement, in an amount to be proven at trial.

19 **SECOND CAUSE OF ACTION**

20 **(Unlawful Conduct and Fraudulent Business Practices,**

21 **California Business & Professions Code §§ 17200, et seq.)**

22 24. MAX incorporates by reference the paragraphs above as if set forth herein.

23 25. As alleged above, DEFENDANT has advertised, offered for sale, sold, and/or
24 facilitated the sale of its "KeepSAFE Shell" Snap On Dual Layer case product line (Exhibit "3).

25 26. On information and belief, products sold under the "KeepSAFE Shell" Snap On
26 Dual Layer case product line are a direct copy, or "knock-off," of MAX's patented case line and
27 were intentionally copied in an effort to profit from MAX's commercial success, good will, and
28 business reputation.

1 Professions Code § 17203 enjoining DEFENDANT, its officers, agents, servants, and employees,
2 and all other persons acting in concert or participation with it, from engaging in the identified (and
3 any other) acts of unfair competition underlying California Business & Professions Code § 17200;

4 4. That MAX be awarded all compensatory, enhanced, special, and other damages,
5 with prejudgment interest, that it is entitled to under the patent statutes and Lanham Act according
6 to proof at trial;

7 5. That this case be decreed an “exceptional case” under the patent statutes and
8 Lanham Act, and that MAX be awarded trebled damages, attorneys’ fees, costs, and any other
9 remedy to which it is entitled;

10 6. That MAX be awarded attorneys’ fees and costs against DEFENDANT under
11 California Business & Professions Code § 17200; and

12 7. That MAX be awarded such further relief as the Court deems just and proper.
13

14 Dated: November 15, 2016

GRECO TRAFICANTE SCHULZ & BRICK

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16 By: s/ Peter J. Schulz
17 Peter J. Schulz, Esq.
18 Scott A. Jalowiec, Esq.
Attorneys for Plaintiff
MAX INTERACTIVE, INC.
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DEMAND FOR JURY TRIAL

Plaintiff MAX INTERACTIVE, INC. hereby demands a jury trial on all issues so triable.

Dated: November 15, 2016

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